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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PATRICK WAYNE ADAMS,

Plaintiff

v.

EDWARD GENE LINDBLADE,
JEANIE LYNNE LINDBLADE,

Defendants

Case No.: 3:20-cv-00222-RCJ-WGC

**Report & Recommendation of
United States Magistrate Judge**

Re: ECF Nos. 1, 1-1

This Report and Recommendation is made to the Honorable Robert C. Jones, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Plaintiff is an inmate incarcerated through the Nevada Department of Corrections (NDOC), but is currently being housed at the Saguaro Correctional Center in Arizona. He has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and pro se complaint (ECF No. 1-1).

I. IFP APPLICATION

A person may be granted permission to proceed IFP if the person “submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1).

The Local Rules of Practice for the District of Nevada provide: “Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP].

1 The application must be made on the form provided by the court and must include a financial
2 affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

3 "[T]he supporting affidavits [must] state the facts as to [the] affiant's poverty with some
4 particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
5 (quotation marks and citation omitted). A litigant need not "be absolutely destitute to enjoy the
6 benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

7 An inmate submitting an application to proceed IFP must also "submit a certificate from
8 the institution certifying the amount of funds currently held in the applicant's trust account at the
9 institution and the net deposits in the applicant's account for the six months prior to the date of
10 submission of the application." LSR 1-2; *see also* 28 U.S.C. § 1915(a)(2). If the inmate has been
11 at the institution for less than six months, "the certificate must show the account's activity for
12 this shortened period." LSR 1-2.

13 If a prisoner brings a civil action IFP, the prisoner is still required to pay the full amount
14 of the filing fee. 28 U.S.C. § 1915(b)(1). The court will assess and collect (when funds exist) an
15 initial partial filing fee that is calculated as 20 percent of the greater of the average monthly
16 deposits or the average monthly balance for the six-month period immediately preceding the
17 filing of the complaint. 28 U.S.C. § 1915(b)(1)(A)-(B). After the initial partial filing fee is paid,
18 the prisoner is required to make monthly payments equal to 20 percent of the preceding month's
19 income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency that has custody
20 of the prisoner will forward payments from the prisoner's account to the court clerk each time
21 the account exceeds \$10 until the filing fees are paid. 28 U.S.C. § 1915(b)(2).

22 Plaintiff's certified account statement indicates that his average monthly balance for the
23 last six months was \$0, and his average monthly deposits were \$0.

1 Plaintiff's application to proceed IFP should be granted. Given that his account balance is
 2 zero, Plaintiff should not be required to pay an initial partial filing fee; however, whenever his
 3 prison account exceeds \$10, he must make monthly payments in the amount of 20 percent of the
 4 preceding month's income credited to his account until the \$350 filing fee is paid.

5 **II. SCREENING**

6 **A. Standard**

7 Under the statute governing IFP proceedings, "the court shall dismiss the case at any time
 8 if the court determines that-- (A) the allegation of poverty is untrue; or (B) the action or appeal--
 9 (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii)
 10 seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C.
 11 § 1915(e)(2)(A), (B)(i)-(iii).

12 In addition, under 28 U.S.C. § 1915A, "[t]he court shall review, before docketing, if
 13 feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in
 14 which a prisoner seeks redress from a governmental entity or officer or employee of a
 15 governmental entity." 28 U.S.C. § 1915A(a). In conducting this review, the court "shall identify
 16 cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--
 17 (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks
 18 monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b)(1)-(2).

19 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
 20 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) and
 21 28 U.S.C. § 1915A(b)(1) track that language. As such, when reviewing the adequacy of a
 22 complaint under these statutes, the court applies the same standard as is applied under Rule
 23 12(b)(6). *See e.g. Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Review under Rule

1 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232
2 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

3 The court must accept as true the allegations, construe the pleadings in the light most
4 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*,
5 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are "held to less
6 stringent standards than formal pleadings drafted by lawyers[.]" *Hughes v. Rowe*, 449 U.S. 5, 9
7 (1980) (internal quotation marks and citation omitted).

8 A complaint must contain more than a "formulaic recitation of the elements of a cause of
9 action," it must contain factual allegations sufficient to "raise a right to relief above the
10 speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading
11 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]
12 a legally cognizable right of action." *Id.* (citation and quotation marks omitted). At a minimum, a
13 plaintiff should include "enough facts to state a claim to relief that is plausible on its face." *Id.* at
14 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

15 A dismissal should not be without leave to amend unless it is clear from the face of the
16 complaint that the action is frivolous and could not be amended to state a federal claim, or the
17 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
18 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

19 **B. Plaintiff's Complaint**

20 Plaintiff's complaint names Edward Gene Lindblade and Jeanie Lynne Lindblade as
21 defendants. He asserts that his rights under the First, Fourth, Eighth, and Fourteenth Amendment
22 were violated.

1 First, he alleges that in March of 2017, Edward Gene Lindblade and Jeanie Lynne
2 Lindblade were visiting John Ames Lindblade and Vicky Jo Lindblade at their home in
3 Gardnerville, and they searched through Vicky Lindblade's private letters without permission. He
4 avers that they seized letters written by Plaintiff to his mother Vicky Lindblade with the intent to
5 forge the letters to fool the court into finding in favor of Edward and Jeanie Linblade when they
6 file for a guardianship over John Lindblade. He claims this was an unlawful seizure and violated
7 the right to privacy.

8 Second, Plaintiff alleges that Defendants conspired to alter and forge the letters to
9 suppress the facts stated in the letters to enter the false letter into evidence in court.

10 Third, Plaintiff alleges that they did this to deprive Plaintiff of contact with Vicky
11 Lindblade, and the forged letter has caused him to be alienated by his family.

12 Plaintiff filed a substantially similar action, case number 3:19-cv-00630-MMD-WGC.

13 The court advised Plaintiff at that time that 42 U.S.C. § 1983 provides a mechanism for
14 the private enforcement of substantive rights conferred by the Constitution and federal statutes.
15 To state a claim under section 1983, a plaintiff must allege: (1) his or her civil rights were
16 violated, (2) by a person *acting under color of state law*. *West v. Atkins*, 487 U.S. 42, 48-49
17 (1988).

18 The court recommended dismissal of the complaint in 3:19-cv-00630-MMD-WGC
19 because the defendants were *not state actors* who are subject to suit under section 1983. (3:19-
20 cv-00630-MMD-WGC, ECF No. 3.) Plaintiff filed an objection to the report and
21 recommendation (*id.*, ECF No. 4); however, District Judge Du adopted and accepted the report
22 and recommendation and the action was dismissed with prejudice. (*Id.*, ECF No. 5.)
23

1 Nevertheless, Plaintiff has filed another action against the same defendants asserting
2 substantially the same allegations and claims. This action, like the first one, does not state a
3 claim under section 1983 because the defendants again are *not state actors*. Therefore, this action
4 should be dismissed with prejudice. Plaintiff should refrain from filing further duplicative
5 lawsuits asserting claims against parties that have already been dismissed with prejudice.

6 **III. RECOMMENDATION**

7 IT IS HEREBY RECOMMENDED that the District Judge enter an order:

8 (1) **GRANTING** Plaintiff's IFP application (ECF No. 1). Plaintiff should not be required
9 to pay an initial partial filing fee; however, whenever his prison account exceeds \$10, he
10 is required to make monthly payments in the amount of 20 percent of the preceding
11 month's income credited to his account until the full \$350 filing fee is paid. This is
12 required even if the action is dismissed, or is otherwise unsuccessful. The Clerk should be
13 directed to **SEND** a copy of an order adopting and accepting this Report and
14 Recommendation to the attention of **Chief of Inmate Services for the Nevada**
15 **Department of Corrections**, P.O. Box 7011, Carson City, Nevada 89702.

16 (2) The complaint (ECF No. 1-1) should be **FILED**.


17 (3) The action should be **DISMISSED WITH PREJUDICE**.

18 The Plaintiff should be aware of the following:

19 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
20 this Report and Recommendation within fourteen days of being served with a copy of the Report
21 and Recommendation. These objections should be titled "Objections to Magistrate Judge's
22 Report and Recommendation" and should be accompanied by points and authorities for
23 consideration by the district judge.

1 2. That this Report and Recommendation is not an appealable order and that any notice of
2 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
3 until entry of judgment by the district court.

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5 Dated: August 19, 2020

6 
7 William G. Cobb
8 United States Magistrate Judge
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